

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SEONG UG SIN,

Defendant.

CASE NO. CR10-5332 JRC

ORDER DENYING
DEFENDANT'S MOTION TO
DISMISS INFORMATION (With
Prejudice)

THIS MATTER having come before the court on the defendant's Motion to Dismiss Information (With Prejudice), and the court having reviewed defendant's Motion (Doc. 67), Declaration of Michael G. Martin (Doc. 68), Supplemental Memorandum in Support of Motion to Dismiss Information (Doc. 72), Government's Response to Defendant's Motion to Dismiss Information (Doc. 73) and Defendant's Reply to Government's Response Re: Motion to Dismiss (Doc. 74), hereby

ORDERS that defendant's Motion to Dismiss Information is hereby DENIED.

The court recognizes that defendant should have a full and fair opportunity to consult with counsel. The Sixth Amendment ensures that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." United States Constitution Amend. VI. This right has long been recognized by the courts. See, e.g., Chandler

1 v. Fretag, 848 U.S. 3, 9 (1954); Maine v. Moulton, 474 U.S. 159, 170-71 (1985). This right to
2 counsel cannot be interfered with by the government. United States v. Stein, 541 F.3d 130, 154-
3 55 (9th Cir. 2008).

4 In this case, defendant has been represented by counsel since June 1, 2010. His counsel
5 had extensively prepared and presented to the court a number of pretrial motions and conducted
6 a multi-day hearing regarding the suppression of evidence. As a result of some late discovery
7 issues, the defendant asked for, and received, a continuance of a previous trial date on the
8 grounds that defendant needed further time to be properly prepared for trial. After seeking the
9 continuance, the defendant asked for, and received, permission to return to his homeland, Korea,
10 between the time of the last scheduled trial and the upcoming trial date.
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12 Apparently, defendant had difficulty obtaining from the government the appropriate
13 travel documents to return to the United States on the previously scheduled date of Thursday,
14 September 23, 2010. Based on the Declaration of Michael Martin (Doc. 68), it is anticipated that
15 defendant will arrive in Tacoma on Sunday, September 26, 2010, the day before the trial is
16 scheduled to begin. The trial is scheduled to last at least four days.
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18 This court's decision to deny the motion is based on three overriding considerations:

19 First, international travel and documentation does not always go as scheduled. While
20 there may have been difficulties in obtaining proper documentation and arranging travel
21 schedules, the defendant brought some of these difficulties upon himself when choosing to return
22 to Korea and to extend his stay until the week before trial.
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24 Second, there is no evidence of any intentional interference by the government. There is
25 no evidence that has been presented which suggests bad faith, coercive tactics or intentional
26 wrongdoing by the government. Considering the distances travelled and language barriers

1 between the parties, it is not surprising that everything does not happen like is it supposed to
2 happen. This would not justify dismissal of all charges against the defendant.

3 Third, and most importantly, defendant has been well represented by counsel. Counsel
4 has already demonstrated to this court a thorough understanding of the facts and issues and
5 shown a high degree of preparation. Although counsel may have been deprived of an additional
6 opportunity to converse with his client, these difficulties can be somewhat overcome through
7 technology. Furthermore, counsel will have additional opportunities during trial to meet and
8 converse. Other than general objections to the lack of adequate time to prepare, defendant has
9 not demonstrated any actual prejudice caused by his delayed arrival.
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11 Trial will begin on Monday, September 27, 2010 at 9:00 a.m. The parties are requested
12 to be present in court at 8:30 a.m. to deal with pretrial matters.

13 DATED this 24th day of September, 2010.
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17 J. Richard Creatura
18 United States Magistrate Judge
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